

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 43 of 1989

PUNAM CHAND
V/S
HEM SINGH

Mr. BALA RAM for Mr. KC SAMDARIYA, for the appellant /
petitioner

Mr. RR NAGORI, for the respondent

Date of Order : 18.10.2006

HON'BLE SHRI N P GUPTA, J.

ORDER

This appeal has been filed by the plaintiff against the judgment and decree of the learned District Judge, Jalore dt. 28.5.1988, setting aside the judgment of the learned Munsiff and Judicial Magistrate, Bhinmal dt. 7.5.1984, and thereby dismissing the plaintiff's suit.

The facts of the case are, that on 10.10.80, the plaintiff filed a suit for Rs. 4080/- against the defendant, alleging that on 11.10.1977 the defendant borrowed Rs. 3000/- from him, agreeing to return the amount within one month, else to pay interest @ 12 % per annum, and executed Rukka. It was alleged that the parties are government employees, and were working under same Panchayat Samati in Village Silasan, and had cordial relations, and therefore, realising the defendant's requirement loan was

advanced for a short-while, which was not returned despite demand, and therefore, the decree was prayed.

The defendant filed the written statement, completely denying to have borrowed any amount, or to have executed any Rukka. Then, it was pleaded that the whole story is a total myth. It was admitted that both the parties are government employees, and were working for the last eight years in village Silasan, and the defendant has recently been transferred in Panchayat Samiti Sanchore. It was admitted that the parties had cordial relations, but then it was alleged that in 1978 the plaintiff got annoyed with the defendant, and therefore a false suit has been filed. An objection was also taken about the document being promissory note, and therefore, being inadmissible in evidence, on account of being unstamped. It was also pleaded that the villagers of Silasan made a complaint against the plaintiff, about his not teaching the children, and his indulged in money lending, and in lending food-grain to villagers at a high rate of interest, and then harassing them, whereupon the Education Extension Officer came to enquire into the complaint, whereupon the plaintiff got annoyed, entertaining a feeling, that the complaint was managed by the defendant, and therefore, the document has been fabricated. It was also contended that had the money been advanced, the document would have been scribed by either of the parties, and since the plaintiff himself is a

government employee, who receives and pays money by affixing revenue stamp, at least revenue stamp should have been got affixed, then the document is said to have been executed at station Kagmala, which is wholly fabricated. It was also contended that on 11.10.1977 defendant was at Raniwara, and next day he went to village Golwara, for which he is maintaining a daily diary. Thus, the defendant was not there on the place, where he is alleged to have executed the document. It was also pleaded that the defendant's daughter was not married around 11.10.77; rather she was married in May, 1978. With these pleadings, it was prayed that the suit be dismissed.

Learned trial court decreed the suit, deciding all the issues in favour of the plaintiff. In appeal the defendant filed an application under O. 41 Rule 27, seeking to produce certain documents, being the certificate about plaintiff's attendance in the school at Silasan, which functions upto 4.30 P.M., attendance register, showing presence of Tulcha Ram in the school Charpatia, which is at a distance of 9 Kms. etc. This application was allowed by the learned lower Appellate Court vide order dt. 15.2.1985, on cost, and the defendant was allowed to lead oral evidence to prove the documents, and also gave opportunity to plaintiff to rebut the evidence. Consequently both the parties led evidence, and the learned lower Appellate Court after considering entire evidence on record, including all

the available attending circumstances, came to the conclusion, that the learned trial court was in error in coming to the conclusion, about the document to be proved to have been executed by the defendant, and consequently the suit was dismissed.

This appeal was admitted vide order dt. 17.4.1989, by framing the substantial question of law; being as to whether the findings of the first appellate court that the defendant did not borrow money and execute the document Ex. 1 are perverse?

Arguing the appeal it was contended by the learned counsel for the appellant, that the plaintiff's evidence, including that of scribe, and of witness, does clearly establish the defendant to have executed Rukka Ex.-1, and to have borrowed cash Rs. 3000/-, and that evidence has not been satisfactorily rebutted by the defendant. It was also contended, that once the defendant admits the signature on the document, then heavy burden lies on the defendant to establish, that he appended the signatures on blank paper, or that the document was subsequently forged, while in the present case the defendant in the written statement had come with a positive case of his having not put his signatures, and the signatures being forged one. In such circumstances, when the defendant's signatures are admitted, it was for the defendant to establish, that the

document was forged, and thus the finding of the learned lower Appellate Court is clearly perverse. It was also submitted, that the learned lower Appellate Court has traveled into the realm of conjectures, about the likely possibilities, and in that process, has built up a big edifice of possibilities against the plaintiff, entertaining suspicion about the execution of the document, and advancement of loan, which is not borne out from evidence on record, and therefore, also the finding is perverse.

On the other hand, learned counsel for the respondent supported the impugned judgment and decree.

I have considered the submissions, and have gone through the record. True it is, that the plaintiff has deposed and proved the document Ex.-1. He has also examined P.W.3 Tulcha Ram the scribe, and also examined P.W.2 Prithvi Singh, who claims to be the witness of the document, and the witness has deposed about having advanced the loan in cash, and the defendant having executed the document. But then, that is not the end of the things, inasmuch as, a look at the statement of P.W.2 shows, that he has clearly deposed, that he was not asked to attest the document as a witness, therefore, he did not sign. He has further deposed, that however, Tulcha Ram was asked to attest the document as a witness, and Tulcha Ram did give

witness. As against this, this is neither the case of the plaintiff, nor the case of P.W.3, and on Ex.-1 no such attestation of any witness appears. Then, coming to the question of admission of signatures on Ex.-1 by the defendant, obviously in the written statement the defendant has denied to have executed any document, or to have signed on the document, and while in the box, as D.W.1 also, has clearly denied to have borrowed any money, or to have executed any document. What is significant to note is, that despite the defendant having been subjected to lengthy cross examination, and the statement running into seven full pages, he was not confronted with Ex.-1, or his signatures thereon. I also do not find any thing on record, which may show that the defendant has admitted his signature on Ex.-1. In that view of the matter, there was no question of any burden being attracted on the defendant, to explain, as to how the document was prepared on blank papers. Thus, even on re-appreciation of evidence, in my view, it is not satisfactorily established, that the defendant executed the document Ex.-1. I am also at one with the findings of the learned lower Appellate Court, about the suspicious circumstances, including the size of the paper, on which the document is scribed, and the torn edges of the document.

Apart from all this the fact also does remain, that the findings recorded by the learned lower Appellate

Court, are pure findings of fact, and in view of the above discussion, it is clear that the findings are not perverse.

The substantial question framed is thus answered against the appellant.

The net result is, that the appeal has no force, and is dismissed. The parties shall bear their own costs.

(N P GUPTA), J.

/Sushil/